



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: July 23, 2004

Item 9 -- Consideration of a Request for an Exemption from the Surface Mining and Reclamation Act (SMARA, Public Resources Code Section 2710 et seq.) by the Smeed Family Trust for a Surface Mining Operation Located in the Sand Canyon Area (former Angus Ranch), Near Tehachapi, Kern County.

BACKGROUND: By petition to the State Mining and Geology Board (SMGB) dated March 31, 2004 (received April 5, 2004), the Smeed Family Trust (Smeed, petitioner) requested an exemption from the requirements of the Surface Mining and Reclamation Act (SMARA, Public Resources Code Section 2710 et seq.) for the removal of approximately 300 to 400 cubic yards of aggregate (primarily decomposed granite) on an annual basis from a site on property owned by the Smeed Family Trust. According to the request, no material is removed from the original Angus Ranch property or sold commercially. Mined aggregate is used solely for road surfacing and maintenance within the original property boundaries. (Reference Cox, Castle, Nicholson letters of March 31, and April 30, 2004)

The County of Kern is the permitting and SMARA lead agency for this mine operation. The County has determined that the activity is a surface mine subject to the requirements of SMARA, and that the nature of this mine does not qualify it for exemption from SMARA. The County contends that this mine has been issued a permit, reclamation plan, and at one time, had approved financial assurances (before they lapsed). According to the County, material from this mine has been exported from the site for commercial purposes, and that the current mine site is not in compliance with the conditions of its approved reclamation plan. (Ref. Kern County letter dated May 26, 2004)

DISCUSSION: SMARA recognizes that not all surface mining operations are an efficient "fit" under the Act, and that many necessary projects of limited size, duration, economic and environmental impact may be prevented, delayed, or rendered uneconomic if the requirements of SMARA were fully applied. To address these special situations, SMARA provides the SMGB with authority under Public Resources Code (PRC) §2714(f) to grant exemptions from the Act under specific conditions when the proposed activity: (1) is a surface mining operation; (2) is of an infrequent nature; and, (3) involves only minor surface disturbance.

Currently, the site is listed with the Department of Conservation's Office of Mine Reclamation (OMR) as the Sand Canyon Pit, operated by Chelsea Investment Company, and is on the OMR's 3098 List of compliant mines.

The Sand Canyon Pit site produced decomposed granite aggregate since the early 1950's as a part of the large 14,000 acre Angus Ranch. The Smeed Family acquired the mine site in 1971 (along with other Angus Ranch land), and used the site as a source for aggregate. Annually, Smeed removed approximately 300 to 400 cubic yards of aggregate for road maintenance. Smeed sold the mine site about 1981 to Yosemite Lakes Camper Park (Yosemite). Yosemite obtained a surface mining permit and reclamation plan from Kern County in November 1982. About 1984¹, the Smeed Family received the mine site back in a foreclosure action when Yosemite went into bankruptcy. (letter, March 30, 2004, pg 2)

According to petitioner Smeed, none of the excavated material is used for commercial purposes (letter, March 30, 2004, pg 2, ¶1); however, some material does leave the property owned by Smeed to supply road metal for the adjacent Quail Valley Water District roads and a General Electric access road, the latter a result of litigation (letter, April 30, 2004, pg 1, ¶4).

Kern County maintains that the mine does serve a commercial purpose, in that it provides road material for subdivided residential developments near the mine site on former Smeed property. Also, Mr. Smeed has a direct involvement with the Quail Valley Water District, and provision of mined aggregate to the District has a commercial benefit to the District. The County argues that there is no legal requirement for Smeed to provide aggregate material to the Enron Wind Corporation (General Electric?) as part of a court action.

In any event, the site has been subject to a reclamation plan and surface mining permit since 1982.

EXECUTIVE OFFICER'S FINDINGS: The Executive Officer makes the following findings:

- (1) The Sand Canyon Pit site is a surface mine in that it meets the definitions for a surface mining operation contained in PRC §2735 and 14CCR §3501;
- (2) The Sand Canyon Pit site exceeds the thresholds of SMARA by producing more than 1,000 cubic yards of material and disturbing more than one acre of land;
- (3) Material that is exported from the site exceeds the 1,000 cubic yards SMARA threshold, and is used for commercial purposes in that there is a commercial and economic benefit received by the Quail Valley Water District and General Electric (Enron Wind Corporation?).

¹ Kern County letter of May 26, 2004, says Smeed reacquired the mine site in 1995 following foreclosure (pg.1, ¶2)

- (4) The Sand Canyon Pit is subject to a lead agency approved surface mining permit and reclamation plan.

EXECUTIVE OFFICER'S CONCLUSIONS: The Executive Officer makes the following conclusions:

- (1) The Sand Canyon Pit is a surface mine, and therefore the SMGB has jurisdiction to consider the petition for exemption;
- (2) The Sand Canyon Pit meets or exceeds the thresholds of SMARA, and therefore is subject to the requirements of SMARA;
- (3) The Sand Canyon Pit already is subject to a lead agency approved surface mining permit and reclamation plan, and therefore cannot be made exempt from those approvals by a SMGB action taken pursuant to PRC §2714(f), regardless of the level or frequency of activity, the scope of land disturbed by the mining activity, or the amount of material removed. A reclamation plan ceases to become operative when the affected mined land is declared by the lead agency to be reclaimed in accordance with the terms of the reclamation plan, and the plan no longer is required. The purpose of the SMGB's exemption authority under PRC §2714(f) is to grant an exemption from SMARA to those proposed surface mining operations that do not have an approved reclamation plan, and for which the requirement to obtain one would be overly burdensome and unnecessary in the determination of the SMGB.

EXECUTIVE OFFICER'S RECOMMENDATION: The Executive Officer recommends that the SMGB deny the petitioner's request for an exemption from the requirements of SMARA pursuant to PRC 2714(f), in that the Sand Canyon Pit already is subject to an approved reclamation plan and the SMGB does not have the authority to exempt the Pit from the approved plan.

SUGGESTED MOTION LANGUAGE:

To DENY the exemption:

Mr. Chairman, in light of the information before the Board today, I move that the Board find that the mining operation proposed by the Smeed Family Trust and as described in this report and its attachments, is subject to the requirements of SMARA, and that the Board deny an exemption from SMARA for this project under its authority provided by Public Resources Code Section 2714(f). The basis for denial is that the mining operation already is subject to a lead agency approved reclamation plan and surface mining permit, and the SMGB does not have authority to exempt the mining operation from these approvals.

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